C.S.B. (1) 3

IN THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR.

MISC. APPEAL NO. 559 OF 2004

APPELLANT NON-APPLICANT NO.3. : United India Insurance Company Limited T.P. Nagar, Korba, Tah. and District Korba (C.G.) (insurer of accidented vehicle).

VERSUS

RESPONDENTS :

1. Smt. Satya Devi widow of Shyamlal aged 35 years.

2. Chandrashekhar aged 23 years son of late Shyam Lal Patel.

3. Chudamani aged 20 years son of late Shyamlal Patel.

All by caste Patel, resident of Balco Nagar, Qr. No. 845/4/A P.S. Balco Nagar, Tahsil & District Korba (C.G.).

Claimants/Applicants

4. Raviraj Parihar @ Sandeep Panda, aged 22 years son of late Motiman Singh, Resident of Balco Nagar, Qr. No. 234/3/A Police Station Balco Nagar, Tahsil and District Korba (C.G.) (Driver of accidented vehicle).

5. Smt. Rajkumari widow of Motiman Singh aged 45 years, resident of Balco Nagar, Qr. No. 234/3/A P.S. Balco Nagar, Tah. & District Korba (C.G.) (Registered owner of accidented vehicle).

Non-Applicant No. 1 & 2.

P.R. No. 1-3024 Presented by Shri ... dated ... 15-5-04

5 RS. COURT FEE भारत CANCELLED पाँच रुपये FIVE RUPEES

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APPEAL UNDER SECTION 173 OF MOTOR VEHICLES ACT 1988.

(CLAIM IN APPEAL VALUED AT Rs. 12,12,296/-).

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... M.A No 558/2004 ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH:
Hon'ble Shri A.K. Patnaik, CJ
& Hon'ble Shri L.C. Bhadoo, J.

30/03/2005: -

MISC. APPEAL NO.558 OF 2004: -

Heard Mr. H.B. Agrawal, Sr. Adv., with Miss Shipra Biswas learned counsel for the appellant.

This is an appeal filed by United India Insurance Co. Ltd. under Section 173 of the Motor Vehicles Act, 1988 against the award dated 08/04/2004, passed by the Second Additional Motor Accident Claims Tribunal (FTC), Korba in Claim Case No.30 of 2004 awarding a sum of Rs.12,12,296/- in favour of respondents/claimants.

The ground taken in the appeal memorandum is that the Tribunal was wrong in not framing the issue of contributory negligence though pleaded by the appellant and that the compensation should have been reduced after apportioning the contribution to the accident by the deceased.

On 09/06/2004, this Court after hearing learned counsel for the appellant issued notices to the respondents on the question of admission and in response to the notice, Mr. Sanjay Patel, learned counsel, has appeared for respondents 1 to 3. Mr. Patel raised a preliminary objection to the maintainability of the appeal saying that the appeal by the insurer against the award on the ground that the compensation amount was liable to be reduced on account of contributory negligence

(पीछे देखिये)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(23)

आदेश पत्रक

मामला क्रमांक M.A.No. 558/2004 **सन्** **200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

on the part of the deceased, was not maintainable as the conditions specified in Section 170 of the Motor Vehicles Act, 1988 were not satisfied and as a matter of fact no permission was granted by the Tribunal to the Insurance Company to contest the proceedings before the Tribunal on the grounds other than the grounds mentioned in Section 149(2) of the said Act. In support of his contention he cited a judgment of the Supreme Court in the case of **National Insurance Co. Ltd, Chandigarh Vs. Nicolletta Rohtagi and others, reported in 2002 SAR (Civil) 860.** Paragraphs 31 & 32 of the aforesaid judgment are quoted hereunder:

> **"31. We have already held that unless the conditions precedent specified in Section 170 of 1988 Act is satisfied, an Insurance Company has no right of appeal to challenge the award on merits. However, in a situation where there is a collusion between the claimants and insured or the insured does not contest the claim and, further, the Tribunal does not implead the Insurance Company to contest the claim in such cases it is open to an insurer to seek permission of the Tribunal to contest the claim on the ground available to the insured or to a person against whom a claim has been made. If permission is granted and the insurer is allowed to contest the claim on merits in that case it is open to the insurer to file an appeal against an award on merits, if aggrieved. In any case where an application for**

(पीछे देखिये)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(24)

आदेश पत्रक

मामला क्रमांक ..... M.A.No. 558/2004 **सन्** **200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

permission is erroneously rejected the insurer can challenge only that part of the order while filing appeal on grounds specified in sub-section (2) of Section 149 of 1988 Act. But such application for permission has to be bona fide and filed at the stage when the insured is required to lead his evidence. So far as obtaining compensation by fraud by the claimant is concerned, it is no longer *res integra* that fraud vitiates the entire proceeding and in such cases it is open to an insurer to apply to the Tribunal for rectification of award.

32. For the aforesaid reasons, our answer to the question is that even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal, it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regards negligence or contributory negligence of the offending vehicle."

It will be clear from the aforesaid judgment of the Supreme Court that unless the conditions precedent specified in Section 170 of the Act 1988 are satisfied, the Insurance Company has no right of appeal to challenge the award on merits and in a situation where there is a collusion between the claimants and the insured or the insured does not contest the claim, it is open to the insurer to seek permission of the Tribunal to contest the claim on the ground available to the insured or to a person against whom a claim has been made and if such permission is granted and the insurer

(पीछे देखिये)

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... M.A. No. 558/2004 ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

is allowed to contest the claim on merits, in that case it is open to the insurer to file an appeal against the award on merits, if aggrieved. Otherwise, the quantum of compensation cannot be challenged by the insurer in an appeal under Section 173 of the Act 1988. It will also be clear from the aforesaid judgment that unless the conditions specified in Section 170 of the Act 1988 are satisfied, it is not permissible for an insurer to question the quantum of compensation as well as the findings as regards negligence or contributory negligence of the offending vehicle.

On perusal of the records of the Tribunal, we find that no permission was applied for under Section 170 of the Act 1988 by the appellant to contest the claim of the respondents/claimants on merits and no permission has been granted by the Tribunal to the appellants in that regard.

In view of the aforesaid decision of the Supreme Court, this appeal is not maintainable and the same is accordingly dismissed.

Sd/-
Chief Justice

Sd/-
L.C.BHADOO
Judge

(पीछे देखिये)